



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/640,858	08/13/2003	John C. Pederson	E30.2-11261	9187
490	7590	09/27/2005	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			CHOI, JACOB Y	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/640,858

Applicant(s)

PEDERSON, JOHN C.

Examiner

Jacob Y. Choi

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/21/05 & 8/8/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 7/21/2005 & 8/8/2005 was filed after the mailing date of the Non-Final Rejection on 12/17/2004. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

3. The information disclosure statement filed 11/8/2004 & 10/27/2003 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

Art Unit: 2875

unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 33, 40, & 59 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/397,693. Although the conflicting claims are not identical, they are not patentably distinct from each other because wordings such as an elongated frame having a base, a light support having sides may be commonly comprehended as a light housing.

Application No. 10/640,858 claim #	Application No. 10/397,693 claim #
33, 40, & 59	1

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

Art Unit: 2875

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 33-39 & 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suckow et al. (USPN 6,183,100).

Regarding claims 33 & 59, Suckow et al. discloses a light support (10) having a front side (33), a circularly placed light emitting diodes arranged about and attached to the front side, and a controller (8A & 8B) in electric communication with the light emitting diodes, the controller constructed and arranged to activate the light emitting diodes thereby producing at least two different types of visually distinct warning light signals, the controller further constructed and arranged to produce the at least two different types of visually distinct warning light signals simultaneously (column 7-8, lines 60-20), the light emitting diodes receiving power from a power source wherein the light support is moveable with respect to the motorized vehicle (claims 14-18).

Suckow et al. discloses claimed invention except for a single row of light emitting diodes.

It would have been obvious matter of design variation to change the shape of the support / base for the light emitting diodes, since such a modification would have involve a mere change in the shape of the component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

Note: Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1874).

Regarding claim 34, Suckow et al. discloses the claimed invention, explained above. In addition, Suckow et al. discloses a gyrator (Figures 9 & 10) attached to the light support wherein the gyrator may move the warning signal light to provide rotational or oscillatory motion.

Regarding claim 35, Suckow et al. discloses the claimed invention, explained above. In addition, Suckow et al. discloses the light support further comprising a back side (34) having a second visible exterior surface having a single row of light emitting diodes arranged about and attached to the second visible exterior surface (Figure 2A).

Regarding claim 36, Suckow et al. discloses the claimed invention, explained above. In addition, Suckow et al. discloses the controller controls the light emitting diodes on the front side, for the provision of different warning light signals on the front side and the back side.

Regarding claim 37, Suckow et al. discloses the claimed invention, explained above. In addition, Suckow et al. discloses the warning light signal is in the form of a directional indicator.

Regarding claim 38, Suckow et al. discloses the claimed invention, explained above. In addition, Suckow et al. discloses the motorized vehicle is a utility vehicle.

Regarding claim 39 Suckow et al. discloses the claimed invention, explained above. In addition, Suckow et al. discloses the motorized vehicle is an emergency vehicle.

Regarding claim 60, Suckow et al. discloses the claimed invention, explained above. In addition, Suckow et al. discloses a motor (93), the motor being engaged to

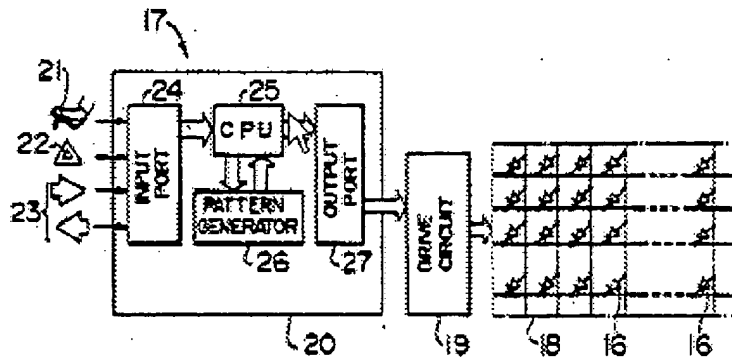
Art Unit: 2875

the light support, the motor being constructed and arranged to move the light support to provide rotational or oscillatory motion.

Regarding claim 61, Suckow et al. discloses the claimed invention, explained above. In addition, Suckow et al. discloses at least one gear (Figure 10), the at least one gear being engaged to the motor and to the light support.

6. Claims 33, 37-39 & 40-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kouchi et al. (USPN 4,868,719).

Regarding claims 33, 40, & 59, Kouchi et al. discloses a light support (10) having a front side (Figure 1), a multiple rows of light emitting diodes (16) arranged about and attached to the front side, and a controller (19& 20) in electric communication with the light emitting diodes (16) thereby producing at least two different types of visually distinct warning light signals ("STOP", "HAZARD", "HELP", "LEFT" & "RIGHT" or matrix that is able to display many different patterns by CPU), the controller further constructed and arranged to produce the at least two different types of visually distinct warning light signals in at least one combination (Figures 7 & 8), the light emitting diodes receiving power from a power source wherein the light support is moveable (rear combination lamp assembly of Kouchi et al. may be remove from vehicle's body) with respect to the motorized vehicle.



It would have been obvious to one having ordinary skill in the art at the time the invention was made to reduce multiple rows of Kouchi et al. and make it a single row lamp device for a vehicle, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184.

Regarding claim 37, Kouchi et al. discloses the warning light signal is in the form of a directional indicator (turn signal; "LEFT" & "RIGHT").

Regarding claim 38, Kouchi et al. discloses the motorized vehicle is a utility vehicle.

Regarding claim 39, Kouchi et al. discloses the motorized vehicle is an emergency vehicle.

Regarding claim 41, Kouchi et al. discloses the at least two different types of visually distinct warning light signals are generated in any combination.

Regarding claim 42, Kouchi et al. discloses the at least two different types of visually distinct warning light signals are generated simultaneously (Figures 5b-8) in any combination.

Regarding claim 43, Kouchi et al. discloses the at least two different types of visually distinct warning light signals are generated alternatively (Figures 7 & 8) in any combination.

Regarding claim 44, Kouchi et al. discloses the at least two different types of visually distinct warning light signals are generated in any combination of two or more visually distinct warning light signals (Figure 6).

Regarding claim 45, Kouchi et al. discloses the at least two different types of visually distinct warning light signals are generated simultaneously (Figures 5b-8) in any combination of two or more visually distinct warning light signals.

Regarding claim 46, Kouchi et al. discloses three or more visually distinct warning light signals are generated alternatively in any combination of two or more visually distinct warning light signals (Figure 6).

Regarding claim 47, Kouchi et al. discloses three or more visually distinct warning light signals are generated in any combination of three or more visually distinct warning light signals (Figure 6).

Regarding claim 48, Kouchi et al. discloses three or more visually distinct warning light signals are generated simultaneously (Figures 5b-8) in any combination of three or more visually distinct warning light signals.

Regarding claim 49, Kouchi et al. discloses three or more visually distinct warning light signals are generated alternatively in any combination of three or more visually distinct warning light signals (Figure 6).

Regarding claim 50, Kouchi et al. discloses the at least two visually distinct warning light signals are generated in a regular pattern (26, a control circuitry 17 for selectively turning on and off the LEDs; column 3, lines 39-41 & column 4, lines 40-65).

Regarding claim 51, Kouchi et al. discloses the at least two visually distinct warning light signals are generated in an intermittent pattern (26, a control circuitry 17 for selectively turning on and off the LEDs; column 3, lines 39-41 & column 4, lines 40-65).

Regarding claim 52, Kouchi et al. discloses the at least two visually distinct warning light signals are generated in an irregular pattern (26, a control circuitry 17 for selectively turning on and off the LEDs; column 3, lines 39-41 & column 4, lines 40-65).

Regarding claim 53, Kouchi et al. discloses the at least two visually distinct warning light signals are generated in a regular sequence (26, a control circuitry 17 for selectively turning on and off the LEDs; column 3, lines 39-41 & column 4, lines 40-65).

Regarding claim 54, Kouchi et al. discloses the at least two visually distinct warning light signals are generated in an intermittent sequence (26, a control circuitry 17 for selectively turning on and off the LEDs; column 3, lines 39-41 & column 4, lines 40-65).

Regarding claim 55, Kouchi et al. discloses the at least two visually distinct warning light signals are generated in an irregular sequence (26, a control circuitry 17 for selectively turning on and off the LEDs; column 3, lines 39-41 & column 4, lines 40-65).

Regarding claim 56, Kouchi et al. discloses the at least two visually distinct warning light signals are generated at regular intervals (26, a control circuitry 17 for selectively turning on and off the LEDs; column 3, lines 39-41 & column 4, lines 40-65).

Regarding claim 57, Kouchi et al. discloses the at least two visually distinct warning light signals are generated at intermittent intervals (26, a control circuitry 17 for selectively turning on and off the LEDs; column 3, lines 39-41 & column 4, lines 40-65).

Regarding claim 58, Kouchi et al. discloses the at least two visually distinct warning light signals are generated at irregular intervals (26, a control circuitry 17 for selectively turning on and off the LEDs; column 3, lines 39-41 & column 4, lines 40-65).

Response to Amendment

7. Examiner acknowledges that the applicant has canceled claims 1-32, claims 33-58 and new claims 59-61 remain in the application.

Response to Arguments

8. Applicant's arguments filed 6/7/2005 & 6/15/2005 have been fully considered but they are not persuasive.

In response to applicant's argument that the reference(s) failed to show certain features, at least two different types of visually distinct warning light or teach multiple types of light signals in combination, it is noted that "in determining the scope of claims in the patent application the claim language must be given their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill

Art Unit: 2875

in the art.” Applicant’s arguments are based on claim language, e.g., “*different types*”, that are not clearly points out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited. Applicant’s claims omit any essential structural relationship of elements to distinguish from the cited prior art (USPN 4,868,719).

The court held that that the PTO is not required, in the course of prosecution, to interpret claims in applications in the same manner as a court would interpret claims in an infringement suit. Rather, the “PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant’s specification.”

While the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, F.3d, 2004 WL 1067528 (Fed. Cir. May 13, 2004).

In other words, the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. Ordinary, simple English words, whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say.

Therefore, it is proper for the examiner to broadly interoperate the term "different types" as broadly as their terms reasonably allow.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize differently shaped reflector, reflective surfaces are polished/mirrored for an efficient reflectivity, of Pond et al. for light rays to spread out toward the device & to provide various angle light output.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Affidavits, Declarations

9. The affidavits under 37 CFR 1.132 filed 5/12/2005 is insufficient to overcome the rejection of claims 33-58 based upon 35 U.S.C. 103 rejection(s) as set forth in the last Office action because: It include(s) statements, which amount to an affirmation that the claimed subject matter functions, as it was intended to function. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716.

In addition, it is noted that the features upon which applicant relies (e.g., *"each light emitting diode and/or group of light emitting diodes of present application may be illuminated by the at least one controller with one of any desired number of different types of light signals at any given moment in time, where adjacent LED's or groups of LED's may be independently illuminated with different types of light signals, to provide a composite lighting effect ... etc"* (pages 5-6)). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims or applicant's opinion and filed affidavits. Claims omits any essential structural relationship of elements to distinguish from the cited prior art (USPN 4,868,719), where applicant is reminded that the claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974).

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 2875

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob Y. Choi whose telephone number is (571) 272-2367. The examiner can normally be reached on Monday-Friday (10:00-7:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2875

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JC



JOHN ANTHONY WARD
PRIMARY EXAMINER